

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: September 30, 2008

TO: Councilmember Frye

FROM: City Attorney

SUBJECT: Use of Infrastructure Funds

Pursuant to your office's request, we have reviewed the September 17, 2008 memorandum of Greg Levin, the City Comptroller, in which he described his office's practices with respect to requests to transfer monies from the "Infrastructure Improvement Fund" (Fund No. 10529) for governmental purposes other than infrastructure improvements. Specifically, we have been asked whether Councilmembers and/or the Mayor may direct such funds be used to supplement funding to an existing service contract with the St. Vincent de Paul Village [SVDPV], under which SVDPV runs the City's Neil Good Day Center, and if such use of funds is permissible, whether an amendment to the City's Appropriations Ordinance, O-2009-4, or other Council action, is necessary.

We have concluded that this use of Infrastructure Funds is permissible in the limited circumstances described, pursuant to the current language of the Appropriations Ordinance. The Ordinance, at section 2.IV.(H), appropriates money to Fund 10529 for "the purpose for which said fund was created." The Fund was created in the 2002 Appropriations Ordinance for "the purpose of financing capital improvements and major maintenance of" various listed public works. However, the 2002 Ordinance also permitted Fund monies to be transferred to the General Fund "for purposes identified by the Mayor or individual Council District."

Reflecting this structure, the 2009 Ordinance, in addition to allowing the funds to be used for infrastructure, also provides that monies "may be transferred and appropriated to the General Fund upon the direction of the Mayor for purposes identified by the Mayor for the Mayor's Infrastructure Improvement Fund or by the Council Districts for the individual Council Districts Infrastructure Improvement Funds." Thus, either the Mayor or the individual Councilmembers may, by so directing, effectuate the use of Fund No. 10529 monies for General Fund purposes. Since the language of the existing Appropriations Ordinance authorizes this action, no amendment to that Ordinance is necessary.

Mr. Levin's memo also addresses the separate issue of whether Council action is necessary when Fund 10529 monies are used "to support outside organizations." Mr. Levin cites the possibility that federal regulations may apply in such cases, the possible need for competitive bidding, liability concerns, and general concerns about stewardship of public funds. We agree that such concerns generally would counsel in favor of heightened scrutiny for transfers of Fund 10529 monies to private organizations, and in some cases would require Council action.

However, we do not view the proposed transfers for the support of the Neil Good Day Center as falling within this category of expenditures. The contract with SVDPV was awarded through a competitive RFP process. That contract already contains terms and conditions addressing liability and requiring compliance with applicable laws. Thus, this situation is not one in which City funds are being given to support a private function. Rather, the proposed transfer of Fund No. 10529 monies constitutes an enhancement of City services through augmentation of a legitimate contract under which the City purchases these services.

MICHAEL J. AGUIRRE, City Attorney



By

Michael P. Calabrese
Chief Deputy City Attorney

MPC:sc

cc: Honorable Mayor
City Councilmembers
Greg Levin, City Comptroller